

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

JUST ONE MORE RESTAURANT CORP.,  
and JUST ONE MORE HOLDING CORP.,<sup>1</sup>

Debtors.

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Case No. 9:19-bk-1947-FMD  
(Jointly Administered with  
Case No. 9:19-bk-1948-FMD)  
Chapter 11 Cases

**DEBTORS' RESPONSE IN OPPOSITION  
TO MOTION TO DISMISS CHAPTER 11 CASES**

Just One More Restaurant Corp. ("JOMR") and Just One More Holding Corp. ("JOMH") and together with JOMR, collectively, the "Debtors", by and through their undersigned counsel, hereby file this response (the "Response") in opposition to the *Motion to Dismiss* (Doc. 243) (the "Motion to Dismiss") filed by Gary Ganzi and Claire Breen, individually and as Attorneys-in-Fact for the Estate of Charles Cook (collectively, the "Plaintiff Minority Shareholders"), and state:

**PROCEDURAL BACKGROUND**

1. On March 7, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. The Debtors are managing their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
3. On April 16, 2019, the Court entered an order authorizing the Debtors to appoint Gerard A. McHale, Jr. as Chief Restructuring Officer (the "CRO") (Doc. 139).

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<sup>1</sup> The last four digits of each Debtor's federal tax identification number are Just One More Restaurant Corp. (5070) and Just One More Holding Corp. (6081). The address of the Debtors is 8955 Fontana Del Sol Way, 2<sup>nd</sup> Floor, Naples, FL 34109.

4. On May 13, 2019, the United States Trustee filed a notice with the Court indicating that the United States Trustee will not appoint a committee of unsecured creditors.

5. For a detailed description of the Debtors, the Debtors respectfully refer the Court and parties in interest to the *Declaration of Chief Restructuring Officer, Gerard A. McHale, in Support of Chapter 11 Petitions and First Day Pleadings* (Doc. 7) (the “First Day Declaration”) filed on the Petition Date which the Debtors incorporate herein by reference.<sup>2</sup>

### **THE MOTION TO DISMISS**

6. On November 12, 2019, the Plaintiff Minority Shareholders filed the Motion to Dismiss.

7. On November 14, 2019, the Court scheduled the preliminary hearing on the Motion to Dismiss for Monday, December 2, 2019 at 3:00 p.m.

### **CHAPTER 7 CASES OF THE DEFENDANT MAJORITY SHAREHOLDERS**

8. On October 11, 2019, each of Walter J. Ganzi, Jr. (“Ganzi”) and Bruce E. Bozzi (“Bozzi”, and together with Ganzi, collectively, the “Defendant Majority Shareholders”) filed in this Court petitions for bankruptcy protection under chapter 7 of the United States Bankruptcy Code. *See* chapter 7 case no. 9:19-bk-09680-FMD (“Ganzi Chapter 7 Case”) and chapter 7 case no. 9:19-bk-09677-FMD (“Bozzi Chapter 7 Case” and together with the “Ganzi Chapter 7 Case, collectively, the “Chapter 7 Cases”).

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<sup>2</sup> The Debtors have chosen not to respond herein to the Plaintiff Minority Shareholders’ incomplete record as set forth in the Motion to Dismiss. To take one example, the Motion to Dismiss alleges that the CRO “determined it was appropriate to file” the Debtors’ chapter 11 cases. *See* Motion to Dismiss, ¶ 2. However, the Plaintiff Minority Shareholders fail to add that this Court has found—at the conclusion of a contested hearing held on July 26, 2019 with respect to a prior motion to dismiss filed by the Plaintiff Minority Shareholders—that, “(a) the Debtors’ chapter 11 bankruptcy cases were properly authorized and filed in good faith, (b) there is no requirement for the Debtors to be insolvent to file for chapter 11 bankruptcy protection, and (c) the Debtors’ chapter 11 bankruptcy cases were filed for the legitimate purpose of preserving the value of the Debtors’ assets.” *See* Order Denying Renewed Motion to Dismiss Chapter 11 Cases (Doc. 161), ¶ 2 (Doc 184).

9. Robert E. Tardif, Jr. has been appointed the trustee in each of the Chapter 7 Cases (the “Chapter 7 Trustee”). *See* Ganzi Chapter 7 Case, Doc. 5; Bozzi Chapter 7 Case, Doc. 15.

### **ARGUMENT**

10. Section 1112(b) provides, in relevant part, that a court may dismiss a chapter 11 case for “cause,” and lists several non-exclusive factors courts can consider. *See* 11 U.S.C. § 1112(b)(1), (4). “[T]he determination of cause under § 1112(b) is ‘subject to judicial discretion under the circumstances of each case.’” *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984) (citation omitted). The party moving to dismiss bears the burden of proof to establish the existence of “cause.” *In re 412 Boardwalk, Inc.*, 520 B.R. 126, 134 (Bankr. M.D. Fla. 2014). In considering a § 1112(b) motion to dismiss, “all doubts are to be resolved in favor of a debtor.” *Id.* (quotation omitted).

11. The Debtors’ bankruptcy cases should not be dismissed in order (i) to permit JOMR the ability to pursue the marketing and the sale of the intellectual property it owns (as defined in the next paragraph, the “Palm IP”) under 11 U.S.C. § 363 in the event that the Palm restaurant business is no longer a viable operation, or alternatively, (ii) if the Palm restaurant business remains a going-concern enterprise, to permit the Debtors to coordinate a sale of the entire Palm restaurant business with the Chapter 7 Trustee. The Palm restaurant business includes, among other assets, the Palm IP and the Defendant Majority Shareholders’ ownership interests in (i) the Debtors, (ii) the Palm Management Corporation (the entity that manages the entire operation and owns real estate located in East Hampton, New York and New York, New York) and (iii) the 21 Palm restaurants owned in whole, or in part, by the Defendant Majority Shareholders.

12. As is well-known at this point in the Debtors’ bankruptcy cases, JOMR owns the Palm intellectual property – a series of trademarks and service marks, design elements of the Palm

(such as its food quality choices and methods of preparation) and the Palm’s decor, display of certain photographs, artistic caricatures, sketches, cartoons and other elements (i.e., the Marks and Works) (collectively, the “Palm IP”).<sup>3</sup> See First Day Declaration, ¶ 12. JOMR licenses the Palm IP to 24 Palm restaurants, including the 21 Palm restaurants owned in whole or in part by the Defendant Majority Shareholders as well as three other Palm restaurants owned by non-debtor third-parties (collectively, the “Palm Restaurants”), through individual pre-petition licensing agreements.<sup>4</sup> See *id.*

13. On behalf of the CRO, the Debtors’ counsel has been in communication for almost two months with two of the nation’s foremost expert consultants who are often retained by debtors with respect to marketing and selling intellectual property in bankruptcy cases. The primary purpose of such communications has been to solicit bids and choose one of them to serve as the Debtors’ intellectual property consultants to market and sell the Palm IP through a competitive sale process in the Debtors’ chapter 11 cases. It almost goes without saying that a critical component for maximizing the proceeds to the Debtors’ estates from a sale of the Palm IP are the buyer protections that a purchaser of such Palm IP would require under 11 U.S.C. § 363. In the

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<sup>3</sup> The Plaintiff Minority Shareholders also assert that JOMR “has failed to collect substantial revenue for the use of its intellectual property”. See Motion to Dismiss, p. 3, ¶¶ 3, 4, and 5. Nothing could be further from the truth. As reflected in the First Day Declaration and in the Monthly Operating Reports timely filed in the Debtors’ bankruptcy cases, JOMR has collected the monthly amounts contractually due under the licenses. See First Day Declaration, ¶ 13 (“Most of the Palm Restaurants pay JOMR a \$6,000 annual fee for the use of the Palm IP”); Monthly Operating Reports for (i) April, 2019 (Doc. 152, ECF p. 3 of 30, reflecting the collection of \$11,500 royalty fees due for March, 2019 and \$11,500 due for April, 2019), (ii) June, 2019 (Doc. 167, ECF p. 3 of 34, reflecting the collection of \$11,500 in royalty fees due for May, 2019), (iii) July, 2019 (Doc. 204, ECF p. 3 of 33, reflecting the collection of \$11,500 in royalty fees due for June, 2019 and \$11,500 in royalty fees due for July, 2019), and (iv) October, 2019 (Doc. 254, ECF p. 3 of 34, reflecting the collection of \$11,500 in royalty fees due for August, 2019 and \$11,500 in royalty fees due for September, 2019).

<sup>4</sup> In addition, Palm Management Corporation has granted a license to The TJX Companies, Inc. (“TJX”) to use the Palm IP to create Palm-branded household goods for retail stores. Under the license, TJX pays Palm Management Corporation a percentage of the purchase cost of each item provided for sale by TJX. See First Day Declaration, ¶ 12.

event that the Palm restaurant business is no longer a viable operation, the Debtors will seek to retain an intellectual property consultant and to move forward with the sale of the Palm IP.

14. Alternatively, if the Palm restaurant business remains a going-concern enterprise, the Debtors' cases should not be dismissed in order to afford the Debtors the ability to collaborate with the Chapter 7 Trustee in order to maximize the collective, combined value of all of the chapter 7 estates and the chapter 11 estates by selling the entire Palm restaurant business inclusive of the Palm IP and the Defendant Majority Shareholders' interests in the Debtors, the Palm Management Corporation and the 21 restaurants. As stated by the Debtors' counsel at the status conference held by the Court on November 13, 2019:

[MR. SINGERMAN:] We don't know, as I've said, what's going on at the restaurant level. We do know that ... Wally Ganzi and Bruce Bozzi estates own a hundred percent of the equity in Palm Management Corporation and of the 21 operating restaurants, if all of them are still operating, and interests in yet a few other restaurants.

We don't know if, in light of the Chapter 7s, Your Honor, that there is still a going-concern enterprise that Mr. Tardif could keep together and sell. I am hopeful, regardless of what happens in the JOMR cases, that there is. I don't know.

We do know that if there is a going-concern enterprise sale of the assets of the corporations that Mr. Tardif's estates have, that to maximize the value of that sale, we need the intellectual property to go along with it if a buyer is going to buy the Palm enterprise. And Your Honor has observed in more than one hearing before this Court, that you understand that.

So if there's going to be an enterprise sale, we need the intellectual property to be sold. If, God forbid, there's no longer an enterprise, or the ability for Mr. Tardif to hold it together to get through a marketing period, then certainly we need to sell the intellectual property. And in light of issues pertaining to it, it is our view -- Mr. McHale's view and ours as his counsel, I think it's an unremarkable position -- that we're going to maximize value for a prospective buyer by having the benefit of a 363 order from the JOMR Bankruptcy Court.

Mr. McHale has directed us, and we have, leading up to today, conducted interviews with widely-recognized firms that specialize in the disposition of intellectual property of financially distressed entities in and out of Bankruptcy Court. I have shared the identity of those firms with counsel for the Minority Shareholders.

*See*, Transcript of Status Conference (11/13/2019), pp. 10:1 to 11:10.

15. Accordingly, the Debtors' cases should not be dismissed in order to permit the Debtors to maximize the value of their estates, either through a sale of the Palm IP as a part of the sale of the entire Palm restaurant business, or alternatively, through just the sale of the Palm IP.

**The CRO and the Chapter 7 Trustee Support the Relief Requested in this Response and Have Begun Working Collaboratively to Create a Process for Maximizing the Sale Value of the Defendant Majority Shareholders' Interests in the Entities that Own, Manage and Operate the Palm Restaurant Business**

16. The CRO and the Chapter 7 Trustee each support the relief requested in this Response.

17. The CRO and the Chapter 7 Trustee have also begun to work collaboratively with one another to create a joint process with respect to the marketing and the sale of the entire Palm restaurant business, or alternatively, the Palm IP in order to maximize the combined value of the assets in the estates of the Debtors and those in the Chapter 7 Cases of Bozzi and Ganzi. It is the business judgment of the CRO and the Chapter 7 Trustee that the value of such assets will be maximized through the coordination of the marketing and the sale process whereby the purchaser(s) of such assets receive the buyer protections afforded by 11 U.S.C. §363.

18. In short order, the Debtors and the Chapter 7 Trustee anticipate filing a joint motion seeking approval of bidding and sale procedures with respect to selling the equity interests owned by Bozzi and Ganzi in the entities that own, manage, and operate the Palm restaurant business.

**WHEREFORE**, the Debtors respectfully request the entry of an Order, (i) sustaining the Debtors' objection and denying the relief sought in the Motion to Dismiss, and (ii) granting such other relief which the Court deems just and proper.

Dated: November 26, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served electronically through the Court's CM/ECF system upon all parties registered to receive electronic notice in these cases as reflected on the attached Electronic Mail Notice List and via U.S. Regular Mail, postage prepaid, upon all parties on the attached Creditor Matrix, to the extent that such parties do not already receive notice electronically through the Court's CM/ECF system, on this 26th day of November, 2019.

/s/ Christopher Andrew Jarvinen  
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## Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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